

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) ) )	MDL NO. 1456 Civil Action No. 01-12257-PBS Subcategory Case No. 03-10643-PBS
THIS DOCUMENT RELATES TO:  <i>City of New York, et al.</i> v. <i>Abbott Laboratories, et al.</i>	) ) ) ) ) ) )	Judge Patti J. Saris  Magistrate Judge Marianne B. Bowler

**MOTION FOR PROTECTIVE ORDER AND TO QUASH  
TARDY SUBPOENA ISSUED BY DEFENDANTS**

Defendants served a subpoena to former NY DOH employee Dr. Thomas Fanning in January of 2011. Yet the April 29, 2009 Case Management Order governing this matter provides that the discovery deadline was April 1, 2010. Since December 2008, Defendants have been aware of Dr. Fanning, and during the three-year period leading up to the end of discovery Dr. Fanning's name has appeared on multiple deposition exhibits.

For reasons set forth in the accompanying legal memorandum, the Court should quash defendants' subpoena to Dr. Fanning as untimely and disruptive to scheduling orders issued by the Court. In the alternative, the Court should enter a protective order barring the deposition. A proposed form of order is attached hereto.

Dated: January 25, 2011

Respectfully submitted,

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/s/ Joanne M. Cicala

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MDL 1456 except Nassau and Orange  
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**Certification Pursuant to Local Rule 7.1**

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that she conferred with counsel for defendants on the issues raised in this motion and has not been able to reach agreement.

Dated: January 25, 2011

/s/ Joanne M. Cicala  
Joanne M. Cicala

**CERTIFICATE OF SERVICE**

I, Kathryn B. Allen, hereby certify that I caused a true and correct copy of the foregoing Motion for Protective Order and Motion to Quash Subpoena Issued by Defendants to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: January 25, 2011

/s/  
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